

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1164 OF 2023

Sariput s/o Arjun Ingole

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. R. J. Nirmal, Advocate for the applicant.

Mr. S. W. Munde, APP for the State.

Mr. Niraj Chudiwal, Advocate (appointed) for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 9th OCTOBER, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 18/2023 registered with Aundha Nagnath Police Station, Dist. Hingoli for the offences punishable under Sections 363, 366, 504, 506 read with Section 34 of Indian Penal Code and Sections 11 and 12 of Protection of Children from Sexual Offences Act.

2. First informant is the father of victim who stated to the police that on 15th January, 2023 at around 4.30 pm, applicant kidnapped the victim. It is stated that he took her away with a threat that he would kill her if she goes to her parents. It is stated by giving false promise of marriage, applicant kidnapped her.

3. Learned counsel for applicant states that the statement of the victim girl clearly indicates about love relationship between them. It is also argued that the applicant and the girl stayed at various places including Parbhani, Mumbai and Tamil Nadu. It is submitted that the stay of the victim for such period of time with the applicant indicates that she was not forced to join his company. It is also stated that there is no allegation against the present applicant about he committed any sexual assault on the victim girl.

4. Learned counsel for the victim opposed the application by contending that since the victim is minor, she could not have consented to go along with the applicant. In order to support his submission, he placed reliance on following authorities :-

- i) Anversinh Alias Kiransinh Fatesinh Zala vs. State of Gujarat
(2021) 3 Supreme Court Cases 12
- ii) Maroti s/o Undaraji Wankhede vs. State of Maharashtra
(2003) 1 Mah.LJ 900
- iii) Thakorlal D. Vadgama vs. The State of Gujrat
AIR 1973 Supreme Court 2313.
- iv) Pramod Suryabhan Pawar vs. State of Maharashtra & another
(2019) 9 Supreme Court Cases 608.

- v) State of Bihar vs. Rajballav Prasad Alias Rajballav Prasad Yadav
(2017) 2 Supreme Court Cases 178
- vi) Ravindra alias Balu Sonaji Hivrale vs. State of Maharashtra
(2015) 4 BomCR (Cri) 433
- vii) Bhima Goroba Sontakke vs. State of Maharashtra
2011(3) AIR BOM R 103
- viii) Peer Mohammad Ghotu Mohd. Ismal vs. State of Maharashtra
& another in Criminal Appeal No. 491/2021.

5. Learned APP also opposed the application by contending that the statement of victim sufficiently demonstrates that she was forced to join the company of the applicant by giving threats to her. Thus, according to him, the offence of kidnapping gets attracted against the present applicant. It is also argued that the applicant is married person whereas the victim is a minor. This, according to him, is a sufficient reason for rejection of the application.

6. There could not be any dispute about the preposition canvassed on behalf of the victim and prosecution that a minor is incapable of consenting however, at the same time, it needs to be seen as to whether there is prima facie material on record to indicate offence of kidnapping which requires enticement or actual taking

away minor from lawful custody of guardians. In the instant case, as per the statement of victim, the applicant and victim were having love relationship. From her statement also it is clear that she was aware about the fact that the applicant is married. In spite of this, the victim had been to various places along with the applicant without any complaint/grievance. Thus this could be a case of love relationship of minor girl of age of understanding with applicant.

7. Prima facie, there is nothing on record to hold that victim is actually removed from the custody of her parents. On the contrary, there is reason to believe that she joined company of applicant. Most pertinently, here in this case, applicant does not seem to have taken away victim to subject her to any sort of physical relations, as there are no allegations against the applicant of exploiting victim sexually. Thus, case of allurement or enticement also may not be made out.

8. In aforesaid circumstances, there is no propriety in denying liberty to applicant, who has no criminal history. Moreover, custodial interrogation of the applicant is not necessary. The objection raised by learned counsel for the victim and learned APP

about applicant pressurising the witnesses etc. does not survive as after recording statement of victim and other witnesses practically investigation into the crime seems to be over. Having regard to these facts, application is allowed in terms of the interim order. Fees of the appointed counsel is quantified at Rs.6,000/-.

(R. M. JOSHI)
Judge

dyb